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Paper No. 22

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In re Application of
Ritchie et al.
Application No. 09/023,259
Filed: February 13, 1998
Attorney Docket No. 1646-007A

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS
DECISION ON PETITION

This is a decision on the petition under 37 CFR 1.137(b), filed January 12, 2001, to revive the above-identified application.

This petition is hereby **Dismissed**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** final agency action within the meaning of 5 U.S.C. §704.

This above-identified application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office Action of June 6, 2000. The final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR 1.136(a). Accordingly, this application became abandoned on September 7, 2000. A Notice of Abandonment was subsequently mailed on December 14, 2000.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was intentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The instant petition lacks item (1) the required reply. The proposed reply required for consideration of a petition to revive after a final Office Action must be a Notice of Appeal

(and appeal fee required by 37 CFR 1.17(b)), an amendment that prima facie places the application in condition for allowance, the filing of a continuing application, or a request for continued examination (RCE). See MPEP 711.03(c)(III)(A)(2) and 37 CFR 1.114. Alternatively, the reply requirement may be met by the filing of a submission under 37 CFR 1.129(a) if the above-identified application is eligible for such transitional practice.

Pursuant to 37 CFR 1.114 "If prosecution in an application is closed, an applicant may request continued examination of the application by filing a submission and the fee set forth in §1.17(e)". Although Petitioner submitted a Request for Continued Examination (RCE) along with the required fee of \$710.00 pursuant to 37 CFR 1.17(e), Petitioner failed to meet the requirements established in 37 CFR 1.114(c). Section (c) states a submission includes but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. Alternatively, Petitioner could have relied upon a previously filed amendment under 37 CFR 1.116 or Appeal Brief. Consequently, Petitioner's failure to make a submission as outlined in 37 CFR 1.114(c) or rely upon a previously filed amendment or Appeal Brief results in an incomplete reply. Accordingly, this application can not be revived.

The address submitted with the instant petition does not correspond with the address of record. If Petitioner desires to receive future correspondence regarding this application, a change of correspondence address must be submitted. A courtesy copy of this decision will be mailed to Petitioner. However, all future correspondence will be directed to the address of record until such time as appropriate instructions are received to the contrary.


Further Correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
WASHINGTON, D.C. 20231

By facsimile: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

Telephone inquiries concerning this matter should be directed to Petitions Attorney
Charlema R. Grant at (703) 306-0251.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

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